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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,874	12/12/2003	Leonard Lieboff	531-P0001	1043

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EXAMINER
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TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/734,874

Applicant(s)

LIEBOFF ET AL.

Examiner

Michael Trettel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/16/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 to 4, 7, 9 to 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamate (US 3,423,773). Yamate shows a body support 10 for an infant 11 who is wearing an spica cast 12. The support 10 comprises an inclined platform 20 supported upon a base formed by a rectangular frame 25. Platform 20 includes a pivot axis formed by a pair of hinges 26a, 26b attached to the base frame 25, and a supporting post 21 that can engage the interior surface of the spica cast to hold the infant in a supported position. A platform prop formed by a rectangular frame 27 is attached to the base frame 25 by hinges 28a, 28b, with the distal end of the frame engaging any one of a set of strips 30-32 attached to the underside of the platform 20. This allows the angle of inclination of the platform to be set at three differing angles, note that the platform can be rested upon the base frame 25 to assume a horizontal position as shown in Figure 2. A retaining belt 61 is used to hold the infant in a secured position upon the platform.

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While it is unclear if the spica cast includes a bar, as is admitted by the applicant in the disclosure it is well known to use a bar within a spica cast, at any rate the bar is only inferentially referred to within the claim and does not form part of the claimed subject matter. The support post 21 can be provided with a foam rubber pad 23 which acts as a protruding portion, the surface of the pad would inherently prevent slippage between the spica cast and the post. Note the embodiment shown in Figure 2, where a plurality of supporting posts are used to support the infant.

Claims 1 to 6, 9 to 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tyndall (US 3,431,020). Tyndall shows an elevated infant support 1 used to support an infant wearing a spica cast. The device comprises a rigid rectangular platform 2 which is pivotally supported by hinges 11 upon a support frame formed by legs 9 and cross pieces 10, 16. A prop 12 can be used to select the desired angle of inclination, note that the platform 2 can be set in a horizontal position if so desired. A spica cast engaging block 4 is attached to the platform. The upper surface of the block 4 can include protruding padding that would inherently grip the surface of the spica cast, preventing movement of the cast relative to the block.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 4, 9 to 11, and 13 to 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over England (US 3,997,926) in view of Yamate (US 3,423,773). England shows a gurney structure 10 that includes a base frame 11 with a set of castors 26 that allow the gurney to be moved freely. A rectangular body support platform 12 with a platform frame 27 is pivotally attached to the base frame 11 upon a horizontal pivot formed by an axle 30 and bearings 29. An electrically operated screw 17 formed as part of a drive means 18 is pivotally attached to the frame 27 upon a pair of depending ears 69. Electric motor 65 rotates the screw 17, which is attached to the base frame 11 at its distal end by a nut 77 attached to brackets 78. Operation of the motor 65 causes the angle of the platform frame 27 to be changed as desired, and to hence adjust the inclination of the body support. Note the provision of a hand held pendant 80 as part of a motor control 19. Yamate teaches that it is known in the art to provide an inclined body support platform with a post 21 that can be used to support a spica cast 12 used upon a patient. The post 21 is covered with a padding 23, and engages the crotch surface of the spica cast so as to properly support a patient in an inclined position during a period of healing. Since this would be a useful addition to the gurney shown by England, it would have been obvious to one of ordinary skill in the art to have provided the England gurney with a spica cast support post as taught by Yamate. In addition the examiner notes that the equivalence of the various types of drive means claimed by the applicant is notoriously old and well known at this time within the art, and as such the use thereof in place of the electrically operated drive means 18 used in England's gurney would have been obvious to the skilled artisan.

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over England (US 3,997,926) in view of Yamate (US 3,423,773) as applied to claim 1 above, and further in view of Keane (US 3,434,165). Keane shows a tilting patient support platform that includes a support surface 11 with a rectal hatch 94a formed in the supporting surface. Read column 5, lines 30 to 50. The use of the toilet or rectal hatch 94a allows a patient to relieve himself/herself into a bedpan placed beneath the hatch, without having to be moved or displaced. Since this would be of importance to a user of the England gurney, it would have been obvious to one of ordinary skill in the art to have provided the England gurney with a rectal hatch structure as taught by Keane.

#### ***Allowable Subject Matter***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ohrberg and Wieland et al show tiltable patient supports that are of general interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The

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examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
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